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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bay Alarm Company,

Complainant,

vs.

US TelePacific Corporation (U5721C) and
Utility Telephone, Inc. (U5807C),

Defendants.

Case 06-07-015
(Filed July 25, 2006)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING EMERGENCY
MOTION AND DIRECTING PARTIES TO MEET AND CONFER**

Summary

The motion of Bay Alarm Company (Bay Alarm) for an order directing defendants to port phone numbers of complainant's customers from US TelePacific Corporation (TelePacific) to Utility Telephone, Inc. (Utility) is denied for failure to show good cause as required by Rule 87 of the Commission's Rules of Practice and Procedure. The parties are directed to meet and confer and advise the assigned Administrative Law Judge of the results of their conference prior to the setting of a prehearing conference.

Background

TelePacific and Utility are both competitive local exchange carriers licensed by this Commission to provide local exchange and/or interexchange service in California. Bay Alarm provides security services to residential

customers throughout California. TelePacific has assigned approximately 2,000 telephone numbers to Bay Alarm.

In April 2006, Bay Alarm notified TelePacific that it had chosen Utility to provide local and interexchange services in place of TelePacific and directed TelePacific to port Bay Alarm's numbers to Utility upon receipt of appropriate Local Service Requests (LSRs). Thereafter, Utility originated LSRs for 300 of Bay Alarm's telephone numbers and TelePacific ported those numbers to Utility. The complaint alleges that TelePacific has refused to honor additional LSRs submitted by Utility though they differ in no material respect from the LSRs for the first 300 numbers.

The emergency motion seeks an order directing TelePacific and Utility to transfer the remaining Bay Alarm numbers to Utility at once.

Discussion

In support of the motion, Bay Alarm alleges it has met the usual requirements for injunctive relief, which it enumerates as:

- Likelihood of success on the merits,
- Irreparable harm,
- No harm to other interested parties, and
- Relief not contrary to the public interest.

While I concur that Bay Alarm is likely to succeed on the merits because of the clear public policy in favor of customer choice of telecommunications service providers, I am going to deny the emergency motion because I do not believe that Bay Alarm has shown irreparable injury. Further, I am unclear about the structure of the complaint and motion; in particular, I do not understand why Utility is a defendant. So far as the complaint discloses, Utility's interest is not adverse to Bay Alarm.

In support of its claim of irreparable harm, Bay Alarm states (Emergency Motion, page 6):

“Bay Alarm has suffered irreparable harm because it is not being served by its carrier of choice, which is contrary to commission rules and policies. The failure to port the Bay Alarm [telephone numbers] is an impediment to competition resulting in irreparable harm that money damages would not sufficiently compensate.”

While denying Bay Alarm its carrier of choice is contrary to Commission policy, the only harm Bay Alarm presently suffers is the inconvenience of having two service providers and the possibly higher rates that TelePacific charges compared to rates that Utility charges for similar service. Bay Alarm does not allege that TelePacific’s failure to port the remaining numbers is jeopardizing Bay Alarm’s business, depriving its customers of security, or causing similar harm that might be irreparable.

If Bay Alarm succeeds on the merits of this case, it will have the service provider of its choice and be made monetarily whole. Under the circumstances, injunctive relief is unnecessary and inappropriate.

The complaint and motion are vague as to the alleged misconduct of Utility and do not make clear what Bay Alarm desires Utility to do, other than submit appropriate LSRs to TelePacific. Since the emergency motion names both TelePacific and Utility as defendants, it would be inappropriate to grant the motion until I understand why Utility is a defendant.

On a more general note, however, Bay Alarm is correct that this Commission has a longstanding policy of permitting customers to freely choose their service providers. A willful refusal to honor LSRs, if that is what

TelePacific is actually doing, would be an unambiguous violation of that policy, no matter what contractual or other issues TelePacific may have with Bay Alarm.

IT IS RULED that:

1. The emergency motion of Bay Alarm Company is denied.
2. The parties are directed to meet and confer and to advise the undersigned in writing no later than close of business on Friday, August 4, 2006, whether they have been able to settle this matter and why Utility Telephone, Inc. should not be dismissed as a defendant.

Dated July 28, 2006, at San Francisco, California.

/s/ STEVEN KOTZ for
Karl J. Bemederfer
Administrative Law Judge

INFORMATION REGARDING SERVICE

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Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated July 28, 2006, at San Francisco, California.

/s/ ELVIRA NIZ

Elvira Niz

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